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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

MILLIE R. LEE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH JUDICIAL DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the admission of an interlocking confession at a confessing co-defendant's trial violates the sixth and fourteenth amendments.

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PRAYER

The respondent asks this Court to deny the petition for writ of certiorari to review the judgment and order of the Appellate Court of Illinois for the Fifth Judicial District insofar as the petitioner's issue does not raise a question of constitutional proportion worthy of review by this Court.

OPINION BELOW

The petitioner seeks review from an Illinois Appellate Court, Fifth District, opinion in People v. Millie R. Lee, No. 5-82-539 (5th Dist. 1984). A copy of the opinion is included with petitioner's petition. The petitioner's petition for leave to appeal to the Illinois Supreme Court was denied April 2, 1985.

JURISDICTION

The jurisdictional requirements are adequately set forth in the petition. As treated more fully in the argument contained herein, however, petitioner has not shown grounds for this Court to exercise its sound discretion to grant his Petition for Writ of Certiorari.

STATEMENT OF FACTS

In 1982, petitioner and her co-defendant, Edwin Thomas, were indicted for the murders of Mattie Darden and Odessa Harris. Both defendants were found guilty following a bench trial and were sentenced to serve extended prison sentences.

In the course of the police investigation following the murders, both petitioner and her co-defendant gave strikingly similar 11-page statements describing the murders.

Petitioner now assigns as error warranting Supreme Court review the admission at her trial of co-defendant Thomas' confession.

REASONS FOR DENYING THE WRIT

No warrantable concerns compel this Court to exercise its discretionary jurisdiction to review the decision below. The Illinois Appellate Court gave full consideration to the issues presented and decided them in accord with prevailing constitutional principles. Thus, the petition for a writ of certiorari does not present the kind of novel or pressing issue worthy of review by this Court.

Petitioner's contention that her sixth and fourteenth amendment rights were violated is squarely governed by the rule set out in Parker v. Randolph, 442 U.S. 62 (1979). In Parker, the United States Supreme Court held that admission of interlocking confessions conforms to sixth and fourteenth amendment principles so long as proper limiting instructions are given. 442 U.S. at 74-75. Those limiting instructions

should advise the jury that the co-defendant's extrajudicial statements are to be considered only against the declarant. 442 U.S. at 73-74.

Petitioner claims specifically 1) that her confession should not have been construed as an "interlocking confession" because she allegedly did not confess to murder and, apparently alternatively, because the two confessions are allegedly not interlocking as to knowledge and intent; 2) that the Illinois Appellate Court erroneously relied on two Illinois Supreme Court decisions; and 3) that the trial court erroneously based its finding of guilt in part on the confession given by petitioner's co-defendant.

Regarding petitioner's first claim, Parker apparently does not require more than that each confession suggest guilt or that each confession at least factually interlock with the other. See Parker, 442 U.S. at 80. Interlocking confessions may be distinguished by comparison with the confession at issue in Bruton v. United States, 391 U.S. 123 (1968). In Bruton, the Court censured as violative of the sixth amendment the use of a non-testifying co-defendant's confession against a non-confessing defendant. 391 U.S. at 128. In the case at bar, petitioner and her co-defendant each rendered a detailed confession describing the commission of the two murders committed in the same place and at the same time. Petitioner's statement that her confession did not constitute a confession to murder is a conclusion of fact the appellate court clearly and reasonably found unwarranted in light of petitioner's eleven page rendition of the gruesome sequence of events. Further, the trial record shows that the confession of petitioner's co-defendant unquestionably inculpated her. Parker does not require more than this; neither does it isolate knowledge or intent as essential elements of interlocking confessions.

Petitioner's second contention, that the Illinois Appellate Court erroneously relied on two Illinois Supreme Court decisions, simply comprises a misreading of the two cited opinions which in fact may be viewed as precursors of the Parker rule. In the first case, People v. Rosochacki, 41 Ill.2d 483, 494, 244 N.E.2d 136, 142 (1969), the Illinois Supreme Court held that the introduction of what we would now refer to as an interlocking confession was harmless error. In the second case, People v. Bassett, 56 Ill.2d 285, 295, 307 N.E.2d 359, 365 (1974) the Illinois Supreme Court said the admission of "interlocking confessions" was not error. These cases are clearly in accord with the Parker rule. While the appellate court perhaps misapplied the Parker rule in form by failing to make clear that a co-defendant's confession may be used only against the declarant, the court's exposition of the trial court's reliance on petitioner's confession shows that the rule was understood and applied in substance.

Petitioner's final claim is that the trial court erroneously based its finding of guilt partially on the co-defendant's confession. While the court should not in any way have considered the co-defendant's confession against petitioner, Parker, 442 U.S. at 73-74, the Court's glancing references to that confession, and the appellate court's refusal to reverse on that basis, do not present the kind of fundamental and flagrant constitutional error that warrants review by this Court. As the Illinois Appellate Court pointed out, although the trial court relied in part on the co-defendant's confession, it relied on petitioner's confession as well. For example, the trial court noted during its pronouncement of guilt that the co-defendant's confession suggested a previously conceived plan, rather than a spontaneous act. Yet the Court also reviewed and doubtlessly relied on petitioner's confession stating that "Me, and Edwin (her co-defendant) had talked about stopping Aunt Mattie from

harassing me before . . ." Thus, the Illinois Appellate Court could reasonably have found that the trial record indicated that the Court considered petitioner's confession in reaching its finding of guilt. Certainly every reference to a co-defendant's confession does not constitute reversible error or merit Supreme Court review. See Kirksey v. Jones, 673 F.2d 58, 59-60 (2d Cir. 1982) (prosecutor's references in summation to co-defendant's confession not error). Indeed, the Illinois Appellate Court's two references to the co-defendant's confession could be fairly read as injudicious but superfluous support for an already well-grounded finding of guilt.

Accordingly, the decision of the Illinois Appellate Court was correct and in accord with prevailing constitutional principles. Petitioner's claim is thus unworthy of review by this Court and his petition should be denied.

CONCLUSION

For the foregoing reasons, the respondent requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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MILLIE R. LEE, PETITIONER,

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NOTICE AND PROOF OF SERVICE

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Please take notice that I have mailed the original of the petition for writ of certiorari and the motion for leave to proceed in forma pauperis in the above-captioned matter to the Clerk of the above Court and that I am serving the Illinois Attorney General, the St. Clair County State's Attorney, the State's Attorneys Appellate Service Commission and the petitioner each with one copy by depositing the copies in the mail in Mt. Vernon, Illinois, with sufficient prepaid postage and addressed as indicated on this 22nd day of May, 1985.

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